

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the County Council of Lexington County will conduct a Public Hearing on November 30, 2021 at 6:00P.M. (or as soon thereafter as can be heard) in the Dorothy K. Black Chambers located on the Second Floor of the County Administration Building, 212 South Lake Drive, Lexington, South Carolina. The purpose of the Public Hearing is to receive public comments on **ORDINANCE 21-18 – “AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND WOLF PIT BRANCH SOLAR, LLC, ALONG WITH ITS AFFILIATES AND RELATED ENTITIES AS SPONSOR, AND SPONSOR AFFILIATES, IF ANY, TO PROVIDE FOR AD VALOREM TAX INCENTIVES, CERTAIN SPECIAL SOURCE REVENUE CREDITS, AND THE AMENDMENT OF ORDINANCE NO. 95-12, AS AMENDED, SO AS TO INCLUDE THE RELATED PROJECT PROPERTY WITHIN THE PARK; AND MATTERS RELATING THERETO.”**

In addition, the Public Hearing will be held electronically in a virtual environment. Those wishing to provide written public comments may do so by visiting the Lexington County Council section of the Lexington County website address of www.lex-co.com. Anyone who wishes to submit comments will need to save the form to your device and email the form to countycouncil@lex-co.com. Additionally, comments may be emailed to countycouncil@lex-co.com or mailed to the Clerk of County Council at 212 South Lake Drive, Lexington, SC 29072. All comments should be submitted by 2:00 p.m. on Monday, November 29, 2021. All public comments will be read aloud during the Public Hearing and included in the minutes of the County Council meeting. The Public Hearing will be livestreamed on the County’s website, and may be viewed by visiting the [Meeting Portal](#). The Public Hearing is also available on Spectrum Cable Channel 1302.

A copy of the Ordinance is available for review at the County from the Clerk of Lexington County Council at 803-785-8103 or by email at BShumpert@lex-co.com. A copy of the Ordinance can also be viewed on the Lexington County Website (www.lex-co.com) under County Council and will be available for viewing the Friday before the Public Hearing.

If special accommodations are needed to participate in the Public Hearing, contact the Lexington County Council office at 803-785-8103 or BShumpert@Lex-co.com.

M. Todd Cullum
Chairman
Lexington County Council

ORDINANCE 21-18

AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND WOLF PIT BRANCH SOLAR, LLC, ALONG WITH ITS AFFILIATES AND RELATED ENTITIES AS SPONSOR, AND SPONSOR AFFILIATES, IF ANY, TO PROVIDE FOR AD VALOREM TAX INCENTIVES, CERTAIN SPECIAL SOURCE REVENUE CREDITS, AND THE AMENDMENT OF ORDINANCE NO. 95-12, AS AMENDED, SO AS TO INCLUDE THE RELATED PROJECT PROPERTY WITHIN THE PARK; AND MATTERS RELATING THERETO.

WHEREAS, Lexington County (“County”) acting by and through its County Council is authorized and empowered (i) under and pursuant to the provisions of (i) Title 12, Chapter 44 Code of Laws of South Carolina, 1976, as amended (“Act”) (a) to enter into agreements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State of South Carolina will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State and (b) to covenant with such industry to accept certain fee payments in lieu of ad valorem taxes (“FILOT”) with respect to such investment; and (ii) pursuant to Section 4-1-175 of the Code of Laws of South Carolina 1976, as amended (“SSRC Act” and together with the Act, collectively, the “FILOT Acts”) to grant special source revenue credits (“SSRC”) against FILOT payments for certain qualifying infrastructure expenditures as defined in the SSRC Act;

WHEREAS, the County, a public body corporate and politic under the laws of the State of South Carolina has, by an Inducement Resolution adopted on October 26, 2021 (the “Resolution”), taken official action to identify the Project (as defined below) for purposes of the FILOT Acts, the statutes and regulations thereunder, and otherwise; and

WHEREAS, the County desires to enter into a FILOT and SSRC agreement (collectively, the “Fee Agreement”) with Wolf Pit Branch Solar, LLC (the “Company”), which shall provide for FILOT payments for a project qualifying under the provisions of the Act and granting SSRCs against such FILOT payments for certain expenditures qualifying under the SSRC Act; and

WHEREAS, the County and the Company desire to enter into a Fee Agreement concerning the development of a facility in the County which will consist of certain personal property including all equipment, furnishings and other personal property required by the Company and any and all activities relating thereto (which properties constitute a project under the Act and are referred to herein as the “Project”). The Project is expected to provide significant economic benefits to the County and surrounding areas. In order to induce the Company to locate the Project in the County, the County has agreed to charge a fee-in-lieu of taxes with respect to the Project, to provide SSRCs against such FILOT payments, and otherwise make available to the Company the benefits intended by the FILOT Act; and

WHEREAS, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Fee Agreement between the County and the Company, which the County shall execute and deliver; and

WHEREAS, as further inducement to the Company, the County will utilize and existing Multi-County Industrial Park which will include the site of the Company’s property that is subject to the fee-in-lieu of tax agreement (the “MCIP”) under the provisions of Article VIII, Section 13 of the Constitution of the State of South Carolina of 1895, as amended (the “State Constitution”), and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (collectively, the “MCIP Law”); and

WHEREAS, the Company is planning an investment of approximately Eighty Million and No/100 Dollars (\$80,000,000.00) in the Project in order to create a solar energy facility within the County; and

WHEREAS, it appears that the documents above referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED by the County Council in meeting duly assembled as follows:

Section 1. *Findings.* Pursuant to the Act and particularly Section 12-44-40(H) and (I) thereof, the County Council has made and hereby makes the following findings:

- (a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;
- (b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$2,500,000.00;
- (e) The benefits of the Project to the public are greater than the costs to the public;
- (f) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and
- (g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. *Authorization to Execute.* In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement, which is attached hereto as Exhibit A, and shall be executed and filed with the Clerk to County Council and which comply with the terms of the aforementioned Resolution are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company.

Section 3. *Authorization to Act.* The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement in a form substantially

identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 4. *Further Acts.* The County Council authorizes the County Administrator, other County staff, and the County Attorney, along with any designees and agents who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an “Authorized Individual”), to take whatever further actions, and enter into whatever further agreements, as any Authorized Individual deems to be reasonably necessary and prudent to effect the intent of this Ordinance and induce the Company to locate the Project in the County.

Section 5. *General Approval.* The consummation of all transactions contemplated by the Fee Agreement and a multi-county industrial park agreement are hereby approved. Subject to the approval of other appropriate governmental entities, the real property subject to this Fee Agreement shall be added to the Joint Park with Calhoun County.

Section 6. *Interpretation.* This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 7. *Severability.* The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 8. *General Repealer.* All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE, RATIFIED AND ADOPTED this ____ day of _____, 2021.

LEXINGTON COUNTY, SOUTH CAROLINA

M. Todd Cullum,
Chair of Lexington County Council

(SEAL)

ATTEST:

By: _____
Brittany Shumpert
Clerk to Lexington County Council

First Reading: October 26, 2021 by Title Only
Second Reading: November 30, 2021
Public Hearing: November 30, 2021
Third & Final Reading: _____
Filed with the Clerk of Court: _____

EXHIBIT A

FILOT AGREEMENT

(attached)

FEE AGREEMENT
BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA
AND
WOLF PIT BRANCH SOLAR, LLC
DATED AS OF

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FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of December ____, 2021, by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “**County**”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “**County Council**”) as governing body of the County, and **WOLF PIT BRANCH SOLAR, LLC** (the “**Company**”), and their respective successors and assigns

WITNESSETH:

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “**Act**”), to enter into a Fee Agreement with companies meeting the requirements of such Act which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State; and

WHEREAS, the Company, as Sponsor, plans to establish a utility scale solar facility in the County through the Project (as defined herein) which will result in **approximately \$80,000,000.00 in new investment into the County** (the “**Projected Investment**”) qualifying as investment under this Fee agreement; and

WHEREAS, pursuant to the Act, the County finds that (a) it is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public; and

WHEREAS, pursuant to an Inducement Resolution dated October 26, 2021 (the “**Inducement Resolution**”) the County committed to (i) negotiate and enter into this Fee Agreement with the Company which provides for payments of fees-in-lieu of taxes for a project qualifying under the Act using an assessment ratio of 6% and a fixed millage rate of **515.107** combined with a Special Source Revenue Credit (as defined herein) to yield a fixed, annual payment-in-lieu of taxes of **\$225,000.00** (the “**Fixed FILOT Amount**”) for 40 years and (ii) provide for and to take such action as is required to place the Project in a multi-county industrial park, provided the Company invests **\$2,500,000.00** (the “**Minimum Investment**”) in the Project; and

WHEREAS, pursuant to the Inducement Resolution, the Company and County have agreed the length of this Fee Agreement shall be 30 years for each Phase (as defined herein), and the County, pursuant to its finding benefit to the general public welfare, has agreed to grant a 10 year extension, as permitted under the Act, so that the total length of this Fee Agreement shall be 40 years for each Phase; and

WHEREAS, pursuant to an Ordinance adopted on December ____, 2021 (the “**Ordinance**”), as an inducement to the Company to develop the Project, the County Council authorized the County to enter into this Fee Agreement and to include the property comprising the Project in a Multi-County Industrial Park subject to the terms and conditions hereof.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained and other value, the parties hereto agree as follows:

ARTICLE 1

RECAPITULATION AND DEFINITIONS

Section 1.1. *Statutorily Required Recapitulation.* Pursuant to Section 12-44-55(B), the County and the Company agree to waive the recapitulation requirements of Section 12-44-55. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55, then the County agrees to waive all penalties and fees of the County for the Company’s noncompliance.

Section 1.2. *Rules of Construction; use of Defined Terms.* Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the “**MCIP Provision**”). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Fee Agreement refers to payments of taxes or FILOT Payments to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

Section 1.3. *Definitions.*

“**Act**” means Title 12 Chapter 44, Code of Laws of South Carolina 1976, as in effect on the date hereof and, to the extent such amendments are specifically made applicable to this Fee Agreement or the Project, as the same may be amended from time to time; provided that if any such amendment shall be applicable only at the option of the County or the Company, then such amendment shall only be applicable with the consent or at the request of the Company.

“**Adjusted FILOT Amount**” shall mean the product of the Fixed FILOT Amount multiplied by the Overage Ratio.

“**Applicable Governmental Body**” means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

“**Chair**” means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

“**Clerk**” means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

“**Commencement Date**” means the last day of the property tax year when Project property is first placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company have entered into this Agreement.

“**Company**” means Wolf Pit Branch Solar, LLC its successors, assigns, subsidiaries, partners, and affiliates, including, without limitation, any Sponsor Affiliate becoming a party to this Fee Agreement by execution and delivery of a Joinder Agreement in a form substantially similar to that attached hereto as **Exhibit B**.

“**County Council**” means the County Council of the County.

“**County**” means **Lexington County, South Carolina**, and its successors and assigns.

“**Documents**” means the Ordinance, this Fee Agreement and the Multi-County Industrial and Business Park Agreement.

“**DOR**” means the South Carolina Department of Revenue and any successor thereto.

“**Economic Development Property**” means all items of real and tangible personal property comprising the Project which qualify as economic development property under the Act, become subject to this Fee Agreement, and which are identified by the Company in connection with its annual filing of a SCDOR PT-300 or comparable forms with the Department (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended by subsequent, formal action of County Council, or automatically as permitted under the Act or under this Fee Agreement. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of Section 12-44-160 of the Act.

“**Equipment**” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings, and other personal property together with any and all additions, accessions, replacements, and substitutes thereto or therefor acquired by the Company during the Investment Period as a part of the Project under this Fee Agreement. The Equipment and its constituent parts together with any and all improvements or other features constructed on, or personal property installed or placed on the Real Property by or for the Company including, without limitation, machinery, fixtures, trade fixtures, racking, inverters, cables, solar panels, and other personal property are personal property for purposes of applicable South Carolina law.

“**Event of Default**” shall mean any Event of Default specified in Section 9.1 of this Fee Agreement.

“Fee Agreement” means this Fee Agreement dated as of December ____, 2021, between the County and the Company.

“Fee Gap” shall have the meaning given in Section 8.6 of this Fee Agreement.

“Fee Term” shall mean the duration of this Fee Agreement with respect to each Stage of the Project as specified in Section 5.3 hereof.

“FILOT Payments” means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

“Fixed FILOT Amount” shall have the meaning given in the Preamble of this Fee Agreement.

“Improvements” mean improvements, together with any and all additions, accessions, replacements, and substitutions thereto or therefor acquired by the Company during the Investment Period as part of the Project.

“Inducement Resolution” shall have the meaning given in the preamble of this Fee Agreement.

“Investment Period” shall mean the period beginning with the first day that economic development property is purchased or acquired and ending on the last day of the fifth property tax year following the Commencement Date, subject to an extension for such period as provided in Section 3.2(b) hereof.

“Minimum Investment” shall have the meaning given in the Preamble of this Fee Agreement.

“Multi-County Industrial and Business Park” means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina.

“Multi-County Industrial and Business Park Agreement” shall mean the Multi-County Industrial and Business Park Agreement dated December 11, 1995 and all amendments thereto between the County and Calhoun County.

“Negotiated Fee” shall mean a total annual payment equal to the Fixed FILOT Amount as paid by the Company during Fee Term, in those years for which a FILOT Payment is due hereunder. However, in the event of an Overage Investment (as provided in Section 5.4 hereunder), “Negotiated Fee” shall mean the Company’s total annual payment of the Adjusted FILOT Amount for those years where a FILOT Payment is due hereunder.

“Ordinance” means the Ordinance adopted by the County on December ____, 2021, authorizing this Fee Agreement.

“Overage Investment” means the total amount invested by the Company at the Project during the Investment Period if, and only if, such investment is greater than the Projected Investment.

“Overage Ratio” means the quotient of the Overage Investment divided by the Projected Investment.

“Projected Investment” shall have the meaning given in the Preamble of this Fee Agreement.

"Phase" or "Phases" in respect to the Project means the Equipment, Improvements, and Real Property, if any, placed in service during each year of the Investment Period, as extended.

"Phase Termination Date" means with respect to each Phase of the Project the day 39 years after each such Phase of the Project becomes subject to the terms of this Fee Agreement. Anything contained herein to the contrary notwithstanding, the last Phase Termination Date shall be no later than December 31 of the year of the expiration of the 39th full calendar year, after the end of the Investment Period.

“Project” shall mean the Economic Development Property, Real Property, and Equipment together with the acquisition, construction, installation, design and engineering thereof which is eligible for inclusion as economic development property under the Act and become subject to this Fee Agreement. The parties agree that Project property shall consist of such property so properly identified by the Company in connection with its annual filing with the DOR of a SCDOR PT-300, or such comparable form, and with such schedules as the DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

"Real Property" means the real property upon which any part of the Project is to be constructed and expanded, as described in **Exhibit A** attached hereto and as supplemented from time to time, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Fee Agreement.

"Removed Components" shall have the meaning given in Section 5.6 of this Fee Agreement.

“Replacement Property” means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

"Sponsor Affiliate" means an affiliate that joins with or is an affiliate of the Company, or that otherwise has a contractual relationship with the Company in respect of the Project, whose Investment with respect to the Project shall be considered part of the Investment and qualify for FILOT Payments pursuant to Section 5.1 hereof and Sections 12-44-30(20) and 12-

44-130 of the Act and who joins and delivers a Joinder Agreement in a form substantially similar to that attached hereto as **Exhibit B**.

“**Stage**” in respect of the Project shall mean the year within which Project property, if any, is placed in service during each year of the Investment Period.

“**State**” means the State of South Carolina.

“**Statutory Investment**” shall have the meaning given in Section 3.3(f) of this Fee Agreement.

Any reference to any agreement or document in this ARTICLE 1 or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

ARTICLE 2

LIMITATION OF LIABILITY; INDUCEMENT

Section 2.1. Limitation of Liability. Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

Section 2.2. Inducement. The County and the Company acknowledge that pursuant to the Act, upon execution of this Fee Agreement, no part of the Project will be subject to ad valorem property taxation in the State, and that this factor, among others, has induced the Company to enter into this Fee Agreement.

ARTICLE 3

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.1. Representations and Warranties of the County. The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result

in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially affect the County's obligations hereunder or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

Section 3.2. *Covenants by the County.* The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations in the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State. Except as reasonably believed to be required by the County in the performance of its duties under statute or law, the County will take no action with respect to the Project unless authorized or requested to do so by the Company.

(b) Upon receipt of written request from the Company, the County agrees to consider any request the Company may make for an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act. Such extension may be provided by a resolution of County Council. Upon the granting of any such extension the County agrees to cooperate with the Company by filing with the DOR a copy of such extension

within 30 days of the date of execution thereof by the County. Such extension may be provided by a resolution of County Council.

(c) The County finds that extending the term of this Fee Agreement to 40 years for each Phase and agrees to do all things necessary to ensure that the total length of this Fee Agreement shall be 40 years for each Phase, including, without limitation, the County granting a 10 year extension, as permitted under the Act, automatically and without further action by the Company, so that the total length of this Fee Agreement shall be 40 years for each Phase.

Section 3.3. Representations and Warranties of the Company. The Company makes the following representations and warranties to the County:

(a) The Company is a South Carolina limited liability company. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The cost of the Project will exceed the minimum investment required by the Act (the "**Statutory Investment**") and will exceed the Minimum Investment.

(g) The Company will pay all reasonable costs of the County, including attorney's fees, incurred in connection with the authorization, execution and delivery of this Fee Agreement.

Section 3.4. Representations and Warranties of the Sponsor Affiliate. The Sponsor Affiliate hereby makes the following representations and warranties to the County:

(a) The Sponsor Affiliate is organized as set forth in the Joinder Agreement, is authorized or will be authorized to transact business under the laws of the State of South Carolina, and has the power to enter into this Fee Agreement.

(b) The Sponsor Affiliate's execution and delivery of this Fee Agreement, or as applicable, the execution and delivery of a Joinder Agreement, and its compliance with the provisions hereof do not result in a default, not waived or cured, under any Sponsor Affiliate restriction or any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The Sponsor Affiliate intends to operate the Project as a "project" within the meaning of the Act as in effect on the date hereof

(d) The availability of the FILOT and the allowance of Special Source Revenue Credits, with regard to the Economic Development Property authorized by the Act, along with other incentives provided by the County, have induced the Sponsor Affiliate to undertake the Project in the County.

Section 3.5. Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, the County Economic Development Department, and the County Treasurer, a copy of its most recent annual filings with DOR with respect to the Project, not later than 30 days following delivery thereof to DOR. In addition, the Company shall certify the amount of the investment maintained at the Project to the County Auditor and County Economic Development Director by April 30 of each year until and including the final year of the Investment Period. Failure to certify to the County shall be deemed a breach of covenant and subject to the provisions of Section 9.1(b).

(b) The company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

ARTICLE 4

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 4.1. The Project. The Company has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain real property and certain machinery, equipment, and other personal property which comprise the Project. The Project will consist of machinery and equipment dedicated to harvesting and distributing solar energy (the "**Solar Business**").

Pursuant to the Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property as defined under the Act, so long as such property meets the requirements of the Act.

Notwithstanding any other provision of this Fee Agreement, the Company may place personal property into service at any time under this Fee Agreement.

Section 4.2. Diligent Completion. The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Fee Agreement to the contrary, the Company shall not be obligated to complete the acquisition of the Project and may terminate this Agreement with respect to all or portion of the Project as set forth in Section 5.10 herein.

Section 4.3. Modifications to Project. The Company may make or cause to be made from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

ARTICLE 5

FILOT PAYMENTS; DISPOSITION OF FILOT PAYMENTS

Section 5.1. Negotiated FILOT Payments. The parties acknowledge that under Article I, Section 3 of the South Carolina Constitution, the Project is exempt from ad valorem property taxes assuming a Fee Agreement is signed. However, the Company shall be required to make the FILOT Payments with respect to the Project as provided in this Section 5.1 and such payments shall be due and payable and subject to penalty assessments in the manner prescribed by the Act. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual FILOT Payments with respect to the Project in an amount equal to \$225,000.00, with such amount being subject to upward adjustment (as set forth in Section 5.4) should the Company cause an Overage Investment. The FILOT Payments and associated SSRCs (as defined in Section 5.1(b)) shall be calculated and become payable as follows:

(a) **FILOT Payment Calculation.** The Company has agreed to make annual FILOT Payments with respect to the Project for the Term of this Fee Agreement. The amount of such annual FILOT Payments shall be determined by the following procedure:

Step 1: Determine the fair market value of the Phase of the Project placed in service in any given year for such year and for the following 39 years, unless extended by the Parties in accordance with the Act, using original income tax basis for State income tax purposes for any real property (provided, if real property is constructed for the fee or is purchased in an arms-length transaction, fair market value is deemed to equal the original income tax basis, otherwise, DOR will determine fair market value by appraisal) and original income tax basis for State income tax purposes less depreciation for each year allowable to the Company for any personal property as determined in accordance with Title 12 of the Code, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to the Company under State law, if the property were taxable, except those exemptions specifically disallowed under Section 12-44-50(A)(2) of the Act, as amended and in effect on December 31 of

the year in which each Phase becomes subject to the Fee Agreement (the “**Phase Fair Market Value**”).

- Step 2: Apply an assessment ratio of 6.0% to the Phase Fair Market Value, as determined for each year in Step 1, to establish the taxable value of each Phase of the Project in the year it is placed in service and in each of the 39 years thereafter or such longer period of years that the annual fee payment is permitted to be made by the Company under the Act (the “**Phase Taxable Value**”).
- Step 3: Multiply the Phase Taxable Value, as determined for each year in Step 2, by a millage rate equal to 515.107 mills, which is believed to be that rate in effect on December 1, 2021, for all taxing entities for the Project site (which millage rate shall be a fixed rate for the term of this Fee Agreement), to determine the amount of the annual fee payments which would be due in each year of the Fee Term on the payment dates prescribed by the County for such payments for a total of forty (40) years for each item of eligible Project property, or such longer period of years that the annual fee payment is permitted to be made by the Company under the Act (the “**Pure FILOT Payment**”).
- Step 4: If the Pure FILOT Payment, as determined for each year in Step 3, is greater than the Negotiated Fee, the County shall subtract from the Pure FILOT Payment an amount equal to the value of the annual SSRC (as defined in Section 5.1(b)) so that the annual FILOT Payment invoiced to the Company for that year shall equal the Negotiated Fee.

If the Pure FILOT Payment, as determined for each year in Step 3, equal to the Negotiated Fee, the annual FILOT Payment invoiced to the Company for that year shall equal the Negotiated Fee.

If the Pure FILOT Payment, as determined for each year in Step 3, is less than the Negotiated Fee, the County shall have the right to adjust the millage rate and/or the assessment ratio to account for the Fee Gap (as provided in Section 8.6) and the annual FILOT Payment invoiced to the Company for that year shall equal the Negotiated Fee.

Exhibit C, attached hereto, sets forth an example of how this procedure should be applied under this FILOT Agreement.

(b) Special Source Revenue Credit. As an inducement for the Investment and in accordance with Section 12-44-70 of the Act, the County grants to the Company an annual Special Source Revenue Credit (the “**SSRC**”) for the entire Fee Term, beginning with the first property tax year for which a FILOT Payment becomes due and to the extent that the Company has made expenditures in such amounts for qualifying expenditures under the Infrastructure Credit Act.

For each year during the Fee Term where the Pure FILOT Payment (as determined each year according to Step 3 of Section 5.1(a)) is greater than the Negotiated Fee, the County shall grant an SSRC to the Company in an amount equal to the Pure FILOT Payment minus the

Negotiated Fee (Exhibit C, attached hereto, sets forth an example of how this procedure should be applied under this FILOT Agreement). In years when an SSRC is granted, the County shall automatically reflect such SSRC against the FILOT Payment on those FILOT invoices provided by the County to the Company. The Company shall be permitted to utilize the SSRC to offset any qualifying expenditures as provided under the Code, including under the Act and the Infrastructure Credit Act.

(c) Allowance for Applicable Exemptions. The FILOT Payments shall be made on the basis that the project property shall not be allowed those exemptions from ad valorem property taxes which may otherwise be applicable to the project property if such property were subject to ad valorem property taxes, including but not limited to, the exemptions allowed under 3 (g) of Article X of the South Carolina Constitution and Sections 12-37-220 (B)(32), (34), and (52) (a) of the SC Code.

(d) Annual FILOT Payments. The Company shall make the FILOT Payments for each year during the term hereof beginning with the tax year following the year property is first placed in service. The FILOT Payments shall be made to the County Treasurer on the due dates which would otherwise be applicable for ad valorem property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(e) Included Property. Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b), (c), and (d) above, for a period not exceeding 40 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b), (c), and (d) above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same property tax year that the Replacement Property is placed in service. More than one piece of property can replace a single piece of property. Replacement Property does not have to serve the same function as the property it is replacing. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Act were not allowed. Replacement Property is entitled to the fee payment pursuant to this Section 5.1 for the period of time remaining on the 40-year fee period for the property which it is replacing.

Section 5.2. Disposal of Property; Replacement Property.

(a) Disposal of Property Generally. In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item or items (or such portion thereof as the Company shall determine) and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) (each, a “**Discretionary Disposal**”) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result

of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain (each, a “**Casualty Disposal**”) shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section 5.2. Subject to the provisions of Section 5.1(e) and this Section 5.2 with respect to Replacement Property, the Phase Fair Market Value (calculated in Step 2 of Section 5.1(a) hereof) shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section 5.2.

(b) Replacement Property. The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to Section 5.2(a) hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, such property shall be treated as Replacement Property.

(c) FILOT Payments on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem taxes* with regard to such Replacement Property as follows:

(i) to the extent that the income tax basis of the Replacement Property (the "**Replacement Value**") is less than or equal to the original income tax basis of the Removed Components (the "**Original Value**") the amount of the FILOT Payments to be made by the Company with respect to such Replacement Property, shall be calculated in accordance with Section 5.1(a) hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 5.1(a) shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to forty (40) (or, if greater, the maximum number of years for which the annual fee payments are available to the Company for each portion of the Project under the Act, as amended) minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(ii) to the extent that the Replacement Value exceeds the Original Value of the Removed Components (the "**Excess Value**"), the FILOT Payments to be made by the Company with respect to the Excess Value, shall be equal to the payment that would be due if the property were not Economic Development Property. Notwithstanding the existence of any Excess Value as a result of the installation of Replacement Property at the Project, the total amount of the annual payment(s) due to the County, including the Negotiated Fee, for the Project shall not exceed in the aggregate the value of the Negotiated Fee due under this Fee Agreement. If legally necessary to ensure this obligation by the County to the Company, the County would take necessary action, including but not limited to, the provision of additional property tax abatements against the payments due for the Excess Value.

(d) Effect of Disposal without Replacement.

(i) If the Company's Discretionary Disposal of property reduces the Company's gross investment in the Project below the required Statutory Investment, the Company shall remain obligated to make annual FILOT Payments for the remainder of the Fee Term.

(ii) If the Company's Casualty Disposal of property reduces the Company's gross investment in the Project below the required Statutory Investment, the Project shall prospectively revert to ad valorem taxation and this agreement shall terminate pursuant to Section 12-44-140 of the Act.

Section 5.3. Fee Term. The applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which the Project is placed in service in that Stage through the last day of the property tax year which is the thirty-ninth (39th) year following such year; provided, that the maximum term of this Fee Agreement shall not be more than 40 years from the end of the last year of the Investment Period. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the earlier to occur of (a) payment of the final installment of FILOT Payments pursuant to Section 5.1 hereof, or (b) exercise by the Company of its option to terminate pursuant to Section 5.10 hereof.

Section 5.4. Overage Investment. If the Company causes an Overage Investment, (i) this Fee Agreement shall remain in force and (ii) the annual FILOT Payments hereunder shall be calculated according to Steps 1 through 4 provided in Section 5.1(a) so that the amount provided as the Negotiated Fee hereunder equals the Adjusted FILOT Amount rather than the Fixed FILOT Amount.

Section 5.5. Multi-County Industrial and Business Park. The County, with the appropriate consent of Lexington County Council and Calhoun County Council, agrees to amend that certain Agreement for Development of Joint County Industrial Park dated December 11, 1995, as amended (the "**Multi-County Industrial and Business Park Agreement**"), to include the Company's facility in the Multi-County Industrial and Business Park identified therein, all pursuant to Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170, Code of Laws of South Carolina 1976, as amended, and the County further agrees to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

Section 5.6. Removal of Equipment. Subject always to Section 5.2(c) and Section 5.2(d), the Company shall be entitled to remove the following types of components or Phases of the Project from the Project (collectively, the "**Removed Components**") with the result that said components or Phases shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Fee Agreement: (a) components or Phases which become subject to statutory payments in lieu of *ad valorem* taxes; (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, determine to be inadequate, obsolete, uneconomic, worn-out, damaged, unsuitable, undesirable or unnecessary; or (c) components or

Phases of the Project or portions thereof which the Company, in its sole discretion, elects to remove pursuant to Section 4.3, Section 5.2, Section 5.7(c), or Section 5.8(b)(iii) of this Fee Agreement.

For the avoidance of doubt, should the Company's Discretionary Disposal of property reduce its gross investment in the Project below the required Statutory Investment, the Company shall remain obligated to make annual FILOT Payments for the remainder of the Fee Term (as provided in Section 5.2(d)(ii) hereof).

Section 5.7. Damage or Destruction of Project.

(a) Election to Terminate. In the event the Project is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement in accordance with Section 5.10.

(b) Election to Rebuild. In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may, in its sole discretion, commence to restore the Project with such reductions or enlargements in the scope of the Project, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered substitutions of the destroyed portions of the Project and shall be considered part of the Project for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 5.1 hereof, to the extent allowed by the Act.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to Section 5.7(a) and elects not to rebuild pursuant to Section 5.7(b), the damaged portions of the Project shall be treated as Removed Components.

Section 5.8. Condemnation.

(a) Complete Taking. If, at any time during the Fee Term, title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued operation of the Project commercially infeasible in the judgment of the Company, then the Company shall have the option to terminate this Fee Agreement in accordance with Section 5.10.

(b) Partial Taking. In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect:

(i) to terminate this Fee Agreement in accordance with Section 5.10 (with respect to its Project property only);

(ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company; or

(iii) to treat the portions of the Project so taken as Removed Components.

Section 5.9. Leased Equipment To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 5.1 hereof, to be applicable to personal property to be installed at the Project and leased to but not purchased by the Company from at least one third party, under any form of lease, then that personal property, at the Company's sole election, will become subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement, upon proper application of the law and applicable procedures by the Company and so long as the value of such leased assets are reported by the Company on its SCDOR PT-300.

Section 5.10. Termination by the Company The Company may only elect to terminate this Fee Agreement pursuant to Section 5.7 or Section 5.8 hereof. If the Company so elects, the Company may initiate such termination by written notice to the County, which shall become effective immediately upon giving such notice or upon such date as may be specified in the notice; provided that the Company shall have made payment to the County of all applicable payments payable under this Fee Agreement as of such time. Upon any such termination, and subject to any provisions herein which shall by their express terms be deemed to survive any termination of this Fee Agreement, the sole consequence to the Company shall be that it shall no longer be entitled to the benefit of the FILOT Payments provided herein and the property constituting the Project shall thereafter be subject to ad valorem tax treatment required by law and, except as may be expressly provided herein, in no event shall the Company be required to repay to the County the amount of any tax benefit previously received hereunder.

Section 5.11. Maintenance of Existence The Company and, as applicable, any Sponsor Affiliate agree (i) that they shall not take any action which will materially impair the maintenance of their corporate existence and (ii) that they will maintain their good standing under all applicable provisions of State law. Notwithstanding the foregoing, any changes in the corporate existence of the Company or, as applicable, any Sponsor Affiliate, that result from internal restructuring or reorganization of the Company or, as applicable, any Sponsor Affiliate, or their parents are specifically authorized hereunder. Likewise, benefits granted to the Company and, as applicable, any Sponsor Affiliate, under this Fee Agreement shall, in the event of any such restructuring or reorganization, be transferred to the successor entity under the provisions of Section 8.2 hereof. Such transfers to a successor entity substantially similar in nature and function to the Company and, as applicable, any Sponsor Affiliate, are specifically approved and authorized by the County without any further action by the County Council.

ARTICLE 6

PROPERTY TAX EXEMPTION AND ABATEMENT

Section 6.1. Protection of Tax Exempt Status of the Project. In order to insure that the Project is not and will not become subject to ad valorem property taxes under the laws of the State of South Carolina or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Q and any other provision in any document shall arise, then in that case, this Q shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to ad valorem property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a “project” in accordance with the Act.

ARTICLE 7

EFFECTIVE DATE

Section 7.1. Effective Date. This Fee Agreement shall become effective upon its execution and delivery by the parties hereto unless a later date is specified herein.

ARTICLE 8

SPECIAL COVENANTS

Section 8.1. Indemnification Covenants

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees (each an “**Indemnified Party**”) harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Fee Agreement in the implementation of its terms and provisions.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur any pecuniary liability to any third-party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if an Indemnified Party should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the Indemnified Party against all pecuniary claims by or on behalf of any person, firm or Company, arising out of the same, and all costs and expenses incurred in connection with any such claim, and upon prompt notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against any claim or liability (1) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of the Fee Agreement, performance of the County's obligations under the Fee Agreement, or the administration of its duties under the Fee Agreement, or otherwise by virtue of the County having entered into the Fee Agreement; (2)

resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(d) An Indemnified Party may not avail itself of the indemnification provided in this Section 8.1 unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(e) Following this notice, the Company shall resist or defend against any claim or demand, action or proceeding, at its expense, using counsel of its choice. The Company is entitled to manage and control the defense of or response to any claim, charge, lawsuit, regulatory proceeding or other action, for itself and the Indemnified Party; provided the Company is not entitled to settle any matter at the separate expense or liability of any Indemnified Party without the consent of that Indemnified Party. To the extent any Indemnified Party desires to use separate counsel for any reason, other than a conflict of interest, that Indemnified Party is responsible for its independent legal fees.

Section 8.2. *Assignment and Leasing.* The County agrees to consent, as allowed by the Act, for financing purposes, to: (a) any sale, transfer, disposition or assignment of the Fee Agreement, whether in whole or in part, by the Company or any transferee or assignee; (b) the transfer or assignment of security or other interests in any or all of the Company's interests in the property subject to the Fee Agreement; or (c) the sublease of any property subject to the Fee Agreement. The County further agrees that, if future County consent is required by the Act, the County Council can provide any such consent by a resolution of County Council. The County Administrator and the Clerk to County Council are hereby expressly individually and jointly authorized and directed to evidence the County's consent by timely executing such documents as the Company may reasonably request. Further, for the purposes of this Fee Agreement and as noted in ARTICLE 5 herein, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of the Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Act.

Section 8.3. *Addition of Sponsor Affiliates.* Upon request of and at the expense of the Company, the County may approve any future Sponsor Affiliate that qualifies under the Act for the benefits offered under this Fee Agreement and which agrees to be bound by the provisions hereof to be further evidenced by such future Sponsor Affiliate entering into a Joinder Agreement in a form substantially similar to that attached to this Fee Agreement subject to any reasonable changes not materially adverse to the County.

Section 8.4. *Fiscal Year; Property Tax Year.* If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

Section 8.5. *Subsequent Legislation.* The County and the Company are aware of pending or planned State legislation expected to provide tax incentives, credits, or relief, above

and beyond any similar tax relief provided under the Act, to entities which engage in the Solar Business (the “**Subsequent Legislation**”). The Company covenants and agrees that it shall not employ any Subsequent Legislation to seek or receive any property tax relief for the Project. The Company further stipulates that the covenant set forth in this Section 8.5 shall qualify as a material covenant under this Fee Agreement.

Section 8.6. Payments in Excess of Required Taxes. The County and Company are aware that, from time to time during the Term, the Pure FILOT Payment required by the Act may be less than the Negotiated Fee set forth in this Fee Agreement (a “**Fee Gap**”). The Company and County covenant and agree that if the Company has invested the Minimum Investment at the Project during the Investment Period and a Fee Gap occurs during the Term, the County shall adjust the millage rate and/or assessment ratio to account for the Fee Gap and the annual FILOT Payment invoiced to the Company for that year shall equal the Negotiated Fee.

Section 8.7. Decommissioning. The Company shall initiate removal and proper disposal of all solar panels at the Project within one hundred twenty (120) days from the date upon which the County provides notice that it has deemed the Project as an Abandoned Project. The County shall only be entitled to deem the Project as an “**Abandoned Project**” hereunder if (a) the Project ceases to produce electricity on a continuous basis for twelve (12) consecutive months and (b) within thirty (30) days of the County’s written demand (delivered after such 12-month period), the Company fails to provide County with suitable evidence of Company’s intent to either (i) reinstate operation of the Project or (ii) transfer ownership interests in the Project.

Section 8.8. Notice of Completion, Project Plat & Required Joinder Agreements. The Company covenants and agrees that it shall provide the County’s Department of Economic Development (the “**Economic Development Office**”) with written notice immediately upon Company’s completion of the Project (the “**Notice of Completion**” and the date thereof, the “**Notice Date**”) and that it shall provide such Notice of Completion prior to either (i) placing the Project into service or (ii) connecting the Project to the power grid (collectively, the “**Notice Requirement**”). The County and Company acknowledge and agree that the Company shall ninety (90) days from the Notice Date (the “**Compliance Period**”) to comply with (or cause the compliance of) the following requirements:

(i) The Company covenants and agrees to deliver all Joinder Agreements required hereunder to the County before the close of the Compliance Period (the “**Joinder Requirement**”). Provided, however, if a third party becomes obligated to join this Fee Agreement during the Fee Term but after the close of the Compliance Period (such party, a “**Springing Affiliate**”), the Company shall use all reasonable and diligent efforts to secure an executed Joinder Agreement from the Springing Affiliate and deliver the same to the County within ninety (90) days from its becoming aware of such Springing Affiliate (which shall be considered the Compliance Period with regard to any Springing Affiliate).

(ii) The Company covenants and agrees (a) to provide the Economic Development Office with a recorded plat (stamped and signed by the County Register of Deeds Office) setting forth the final, physical boundaries of the Project (the “**Project**”

Plat”) and (b) to deliver such Project Plat to the Economic Development Office before the close of the Compliance Period (collectively, the “**Plat Requirement**” and together with the Joinder Requirement, collectively, the “**Material Requirements**”). The County shall append the Project Plat to Exhibit A, attached hereto, upon its receipt of the same from the Company and the Project Plat shall thereafter be considered part of this Fee Agreement.

Section 8.9. Ordinance 21-04. On July 27, 2021 County Council gave third and final reading to Ordinance 21-04 An Ordinance Amending the County of Lexington Zoning Ordinance to Include Specific Provisions for Solar Farm Land Uses (“**Ordinance 21-04**”). The Company acknowledges Ordinance 21-04 and agrees to abide by and comply with Ordinance 21-04.

ARTICLE 9

EVENT OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The occurrence of any one or more of the following events shall be an “Event of Default” under this Fee Agreement:

(a) If the Company shall fail to make any FILOT Payment described in Section 5.1 or any other amount required under this Fee Agreement and such failure shall continue uncured for 90 days after receiving written notice of default from the County; provided, however, that the Company shall be entitled to all redemption rights for non-payment of taxes granted by applicable statutes; or

(b) If the Company or the County shall fail to observe or perform any Material Requirement or any other material covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 90 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of “Force Majeure” as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 90 days to cure such default and the Company or the County is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term “Force Majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts, regulatory restraints affecting the use of the Real Property, or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

Section 9.2. Remedies on Default. Whenever any Event of Default shall have happened and be subsisting uncured for 90 days from delivery of written notice to the Company, the County may take whatever action at law or in equity may appear legally required or necessary or desirable to collect the FILOT Payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents, including the right to terminate this Fee Agreement. Although the parties acknowledge that the Project is exempt from ad valorem property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and the Act relating to the enforced collection of taxes.

Section 9.3. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE 10

MISCELLANEOUS

Section 10.1. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 10.1:

If to the Company:	Wolf Pit Branch Solar, LLC c/o Pine Gate Renewables 880 Apollo Street, Suite 333 El Segundo, California 90245 Attn: Michael Cohen
With A Copy To:	Adam Fisher, Senior Counsel Pine Gate Renewables, LLC 130 Roberts Street Asheville, North Carolina 28801 afisher@pgrenewables.com
With A Copy To: (shall not constitute notice)	Anthony M. Quattrone Adams and Reese LLP 1501 Main Street, 5 th Floor Columbia, SC 29201 E-mail: anthony.quattrone@arlaw.com Facsimile: 803-343-1227
If to the County:	Lexington County Council, South Carolina 212 South Lake Drive

Lexington, SC 29072
Attention: Clerk to Council
Facsimile: 803-785-8101

With A Copy To:

Jeffrey M. Anderson
Davis Frawley, LLC
140 E. Main Street
P.O. Box 489
Lexington, SC 29071-0489
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

Section 10.2. *Binding Effect.* This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

Section 10.3. *Invalidity and Severability.* In the event that the Act or the FILOT Payments arrangement described in ARTICLE 5 hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

Section 10.4. *Payments Due on Saturday, Sunday and Holidays.* Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

Section 10.5. *Fiscal Year; Property Tax Year.* If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

Section 10.6. *Amendments, Changes and Modifications.* Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council.

Section 10.7. *Execution of Counterparts.* This Fee Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code

perfection purposes; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

Section 10.8. *Law Governing Construction of Agreement.* The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

Section 10.9. *Filings.* Whenever the County shall be required to file or produce any reports, notices or other documents during the Fee Term, the Company shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

Section 10.10. *Headings.* The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 10.11. *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

Section 10.12. *Force Majeure.* The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by any Force Majeure.

(Signature Page follows)

IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY, each pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

LEXINGTON COUNTY, SOUTH CAROLINA

M. Todd Cullum
Chair of Lexington County Council

ATTEST:

Brittany Schumpert, Clerk to Council
Lexington County Council

WOLF PIT BRANCH SOLAR, LLC

By: Michael Cohen
Its: Authorized Person

EXHIBIT A

DESCRIPTION OF PROPERTY

Approximately 650 acres of land located within the parcel identified at County TMS# 012400-01-005, all as more specifically provided on the Project Plat, attached hereto by the County upon its receipt of the same by the Company.

EXHIBIT B

JOINDER AGREEMENT

Reference is hereby made to (i) that certain Fee Agreement effective _____ (“Fee Agreement”), between Lexington County, South Carolina (“County”) and Wolf Pit Branch Solar, LLC (“Company”).

1. Joinder to Fee Agreement.

The undersigned hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement except the following: _____; (b) acknowledges and agrees that (i) in accordance with the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project and such designation has been consented to by the County in accordance with the Act (as defined in the Fee Agreement); (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(A)(19) and Section 12-44-130 of the Act; and (iii) the undersigned shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Fee Agreement.

2. Capitalized Terms.

All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Fee Agreement.

3. Governing Law.

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.

4. Notice.

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[_____]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date: _____

[ENTITY NAME]

By: _____

Its: _____

EXHIBIT C

FILOT PAYMENT EXAMPLE CALCULATION

In summary, Wolf Pit Branch Solar, LLC will pay \$225,000 per year for the term of this Fee Agreement, unless the investment is greater than \$80,000,000.00 and in that case this annual Fee payment shall be increased by the percentage of the actual investment over \$80,000,000.00.